IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 8860 of 2007(D)

PETITIONER:

VIKAS.M.V., S/O.BHASKARAN,
YAMUNA, KUSAL NAGAR, KANHANGAD.

BY ADV. SRI.K.I.SAGEER

RESPONDENTS:

---

1. KANHANGAD MUNICIPALITY, REPRESENTED BY
ITS SECRETARY, MUNICIPAL OFFICE, KANHANGAD.

2. SECRETARY, KANHANGAD MUNICIPALITY,
MUNICIPAL OFFICE, KANHANGAD.

3. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY LOCAL SELF ADMINISTRATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

4. K.G.BENUGOPAL,
ALAMIPALLY P.O., KANHANGAD- 671315,
HOSDURG, KASARAGOD.

BY S.C SRI.K.K.CHANDRAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO.8860 of 2007

Dated this 16th day of March, 2007

JUDGMENT

Heard Sri.K.I. Sageer Ibrahim, the learned counsel for the petitioner and Sri.K.K.Chandran Pillai, the learned Standing Counsel, who has taken notice, for the respondent Municipality. Even though it was very persuasive submissions, which were addressed before me by the learned counsel for the petitioner, having regard to the narrow contours of this court's jurisdiction to correct orders passed by the Judicial Tribunal under the extraordinary constitutional jurisdiction, I do no think that this Court will be justified in interfering with this matter. I find that the Tribunal has noticed the fact that the 4th respondent, a portion of whose property having original extent of one cent was acquired for road is now left with a very small extent and hence felt that he should be permitted to make necessary alterations to the existing remnant building, so that after the alterations the building will conform to the building rules. The

Tribunal has stated that the 4th respondent herein should be given an opportunity to make his building regularised. The Tribunal has directed him to submit an undertaking before the Municipality within 30 days from that day, to effect alterations to the building directed to be demolished as per Order No.E2-962/2006 so as to make the same in conformity with the statutory provisions and to apply for its regularization.

2. The learned counsel for the petitioner submits that the Municipality does not have the power to regularise buildings which have been constructed in violation of the building rules.

3. I cannot agree with the counsel for the petitioner. The direction is that the Municipality shall consider the regularization application only after it is convinced that the building after alterations are effected to it by the appellant (4th respondent), conforms to the building rules.

The writ petition fails and will stand dismissed. However, there will be a direction to the Municipality to pass orders on the regularization application only after conducting local inspection of the building after alterations are effected by the 4th respondent in terms of the affidavit to be submitted by him with notice to the

petitioner. Final order on the regularization application also shall be passed after hearing the petitioner also. Even if the Municipality is inclined to assign a number to the building pending application for regularization, such numbering will be provisional and subject to the final decision to be passed on the regularisation application and the 4th respondent should be specifically informed about the same.

PIUS C.KURIAKOSE
Judge

dpk